

IN THE

# United States Circuit Court of Appeals

For the Ninth Circuit

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SIU SAY,

*Appellant,*

vs.

JOHN D. NAGLE, as Commissioner of Immigration for the Port of San Francisco,

*Appellee.*

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## BRIEF FOR APPELLEE

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No. 4103

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### ARGUMENT.

The petition herein alleges unfairness on the part of the immigration authorities in denying the application of Siu Mooy Chew to enter the United States. Siu Mooy Chew claims to be the son of Siu Say. Admittedly the alleged father is a domiciled Chinese merchant and it is shown that he was in China at a time to permit of his being the parent of the applicant, who is now sixteen years old.

The testimony of the following persons was heard relative to the relationship claim: Siu Say, the alleged father; Siu Mooy Kit, an alleged brother, who was admitted to the United States in the year 1917, and a Chinese witness named Low Quai.

The record (Exhibit D, page 15) shows that Siu Mooy Kit testified in 1917 respecting his paternal grandmother as follows:

“Q. What is the name, age and kind of feet of your father’s mother?

A. Wong Shee, 81 years old, has natural feet.

Q. Where does she live?

A. At the Soo Moo Yin village in my house.

Q. Any others living in your house besides your grandmother and brother?

A. No.”

Siu Say, the alleged father, testified at the same hearing in 1917 concerning the same matter as follows:

“Q. Do any others live in your house besides your own family?

A. My mother and a servant girl.

Q. What is the name, age and kind of feet of your mother?

A. Wong Shee, natural feet, seventy-one years old.” Ex. D, p. 20.

At the present time the testimony of Siu Mooy Kit, the alleged brother, is as follows:

“Q. What is your paternal grandmother’s name and whereabouts?

A. Wong Shee, she died several days before I came to the United States from China.

Q. Why did you say when you came here that she was living?

A. If they asked me that I said: ‘She is dead.’

Q. At that time you said your father’s mother was Wong Shee, 81, natural feet, ‘living in my house in Sow Mee Yuen village’; that ‘she lived there with my brother only.’ What have you to say to that? That was asked you in three different questions.

A. If I said that I don’t know why I did. she died before I left China.” Ex. A, p. 26.

The alleged father’s testimony in the instant case on the same point was as follows:

“Q. What is your mother’s name and whereabouts?

A. Wong Shee, she died six years ago, in 1917.

Q. Did your mother die before your son Mooy Kit came to this country?

A. Yes.

Q. Did you have more than one mother?

A. Only one.

Q. Was that mother's name Wong Shee?

A. Yes.

Q. Are you sure she died in 1917?

A. Yes, she died the year Mooy Kit came to this country, he told me about it.

Q. Where did she live before she died?

A. In my brother Siu Gaw Gee's house in the same village." Ex. A, p. 28.

Siu Mooy Chew, the present applicant, was questioned concerning his paternal grandmother as follows:

“Q. Are your father's parents living?

A. My paternal grandfather is dead. My paternal grandmother is living. Ex. A, p. 9.

Q. Describe your paternal grandmother.

\* \* \* \* \*

A. Wong Shee, 87 years, natural feet, now living in my home village." Ex. A, p. 10.

The substance of the discrepancy then is that the present applicant states that his paternal grandmother is living in the same village from which the applicant comes, while his alleged father and brother say that this woman is dead.

Another disagreement in the testimony which was considered by the immigration authorities is substantially as follows:

The applicant testified that all of his schooling

had been in the home village of Sow Mee Yuen. Ex. A, 23, 24.

His alleged father testified that the applicant had also attended school recently in Sheek Kee City, which information he had received from the applicant's uncle Siu Gaw Gee. Ex. A, p. 27. The alleged brother states also that the applicant had attended school in Sheek Kee City, the applicant having written him a letter containing this information. Ex. A, p. 25. The witness, Low Quai, states that he met the applicant in Sheek Kee City last year when he, witness, was home on a visit. He was introduced to the applicant, he states, by Siu Gaw Gee, the uncle of the applicant, who mentioned that the applicant was the son of Siu Gee. Ex. A, p. 39. It is noted that the witness, when he arrived in the United States upon his return from China, stated that he had not been introduced to the son, daughter or wife of any resident of the United States. Ex. C, p. 18.

The discrepancies noted are some of the grounds on which the Secretary of Labor found against the applicant. Clearly the discrepancies are concerning matters about which the witnesses cannot be presumed to be mistaken and their discordant testimony in this respect clearly justifies the adverse finding of the administrative officers.

In such a case we believe the rule *falsus in uno, falsus in omnibus*, should be applied.



In the case of the Santissimo Trinidad, 7 Wheaton 283, 5 L. Ed. 454, the Supreme Court said:

“If the circumstances respecting which the testimony is discordant be immaterial, and of such a nature, that mistakes may easily exist, and be accounted for with the utmost faith and probability, there is much reason for indulging the belief that the discrepancies arise from the infirmity of the human mind, or other than from deliberate error. But where a party speaks to a fact in respect of which he cannot be presumed to be liable to mistake, as in relation to the country of his birth, or his being in a vessel on a particular voyage or living in a particular place, if the fact turn out otherwise, it is extremely difficult to exempt him from the charge of deliberate falsehood; and courts of justice under such circumstances, are bound, upon principles of law and morality and justice to apply the doctrine *falsus in uno, falsus in omnibus*.”

When the applicant was originally examined on the 26th of April, 1923, he was questioned regarding the sisters and brothers of his alleged father (Ex. A, p. 8). He stated that his father had one brother, no sisters.

“Q. Are you sure your father never had a sister?

A. Yes, he never had a sister.

Q. Did you ever know or hear of a man named Mar Chun Gun?

A. No.



Q. According to the statement of your father and brother, when the latter was an applicant for admission in 1917, your statement that your father has no sister is incorrect?

A. If he has a sister, I don't know it. I never heard of any.

Q. Do you know anybody by the name of Mar Sheung?

A. Yes.

Q. Who is he?

A. He is a son of my aunt, a cousin of my father.

Q. Are you sure Mar Sheung is not a son of a sister of your father?

A. Yes."

Upon the examination of the alleged father respecting the same subject on May 18, found at page 28 of Exhibit A, the father stated he had one sister; that she was married to Mar Dai, who died a long time ago, and explained the reason that the applicant did not know anything about his having a sister by saying "Probably he was not told by my mother." Subsequently the applicant was again examined and given an opportunity to make any changes in his prior statement. The testimony being found on page 23 of Exhibit A. He then states as follows:

"My father had a sister which I did not mention before, I said before it was a cousin of my father."

Q. Where is your father's sister now?

A. She is married. I don't know where she is living.

Q. Do you know her husband's name?

A. He is a Mar family name. I don't know his full name.

Q. How many children has she?

A. She has one son, no daughter. The son's name is Mar Sheung.

Q. Where did you get your information about your father's sister?

A. From my memory.

Q. How is it your memory is so good today and so poor before?

A. After my first hearing I thought it over about making a mistake, but did not ask to change it at that time.

Q. You were asked several questions along the same line and if you knew it was not correct, what you said, why did you not change it?

A. After he asked me on that point, I knew I was wrong, but did not want to change it because I was afraid you might think I was giving incorrect information.

Q. The Examining Inspector at that time hinted to you all the time that your father had a sister, why should you hold out the information if you knew it was a fact that your father had such a relative?

A. I was afraid to change it."

From a consideration of the foregoing testimony pertaining to the question of whether applicant had a paternal aunt or not the Examining Inspector commented in his report as follows:

“I believe the reason the hearing of this case on relationship was asked to be done at the Island (instead of at Suisun) was for the purpose of coaching. This is brought out very forcibly by the testimony of the applicant on re-examination in the case of an alleged sister of the alleged father. It will be noted how absolutely in ignorance the applicant was on this subject when first examined on April 26th. Now (May 18th) without any help from the outside, he claims to have all knowledge of this person.” Ex. A, p. 30.

Counsel contends that the foregoing remarks of the Inspector indicate that the Inspector was prejudiced and that the hearing was unfair.

But the Secretary of Labor, to whom appeal was taken, did not agree with nor concur in the inferences and remarks of the Inspector, but rejected them in no uncertain terms as follows: (See Exhibit “A,” page 59.)

“In connection with the fact that the alleged father and the applicant testified at Angel Island rather than being examined on the relationship feature at Suisun, Inspector Wurm has indulged in some unwarranted speculation and inference. He concludes that because these persons were presented at Angel Island they were brought to San Francisco in order that

coaching might be resorted to, and he apparently also assumes that it was necessary to bring them to San Francisco in order to get into unauthorized conversation with the applicant. The Board of Review can find nothing whatever in the record to support the inference and Inspector Wurm's argument is labored and without apparent reason. Apparently it is nothing more than suspicion."

There is nothing to indicate that the Secretary's decision was based on the opinion found in the inspector's report hereinabove referred to—quite the contrary this feature of the case was rejected in toto.

The applicant was given a full and fair opportunity to be heard and all testimony offered by himself and his witnesses was received. Without reference to this phase of the inspector's report, it conclusively appears therefrom that the evidence submitted did not establish the relationship claimed, and eliminating this paragraph the Secretary was able to and did make a fair and independent finding on the evidence.

It is manifest that the applicant's case was not prejudiced by the conclusions of the inspector because the Secretary rejected said conclusions and expressly shows that they did not influence his decision.

The basis for the Secretary's' decision is to be found in the discrepancies in the testimony which have already been noted.

This being the case the general rules of law applicable are too well settled and familiar to call for extended citation of authorities or discussion.

Congress has by the immigration statutes conferred upon the executive officers final and exclusive jurisdiction to hear and determine whether any particular individual is an alien and eligible to admission in so far at least as such determination depends on conclusions reached on disputed questions of fact. (*United States v. Sprung*, 187 Fed. 903.) The court will not go into the sufficiency of probative facts. (*White v. Gregory*, 213 Fed. 768.) Where the executive officers found that the evidence in support of the alien's right to land was so impaired by discrepancies as to render it unsatisfactory, the court is not authorized to reverse that conclusion. (*Jeung Bock Hong and Jueng Bock Sing v. White*, 258 Fed. 23.)

It is urged that the action of the Secretary of Labor in denying the application of Siu Mooy Chew to enter the United States and ordering his deportation is clearly a lawful exercise of the authority which the law has conferred upon the Secretary.

Respectfully submitted,

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